

**BEFORE THE
ILLINOIS COMMERCE COMMISSION**

Access One, Inc.;)	
ACN Communications Services, Inc.;)	
Allegiance Telecom of Illinois, Inc.;)	
Bullseye Telecom, Inc.;)	
CIMCO Communications, Inc.;)	
CoreComm Illinois, Inc.)	
DSLnet Communications, LLC;)	
Focal Communications Corporation of Illinois;)	
Forte Communications, Inc.;)	
Globalcom, Inc.;)	
Mpower Communications Corp.)	
d/b/a Mpower Communications of Illinois;)	
RCN Telecom Services of Illinois, LLC;)	
and XO Illinois, Inc.)	
 vs.)	 Docket No. 04-0419
 Illinois Bell Telephone Company d/b/a SBC Illinois)	
 IN THE MATTER OF A COMPLAINT)	
AND PETITION FOR AN)	
EXPEDITED ORDER THAT SBC)	
REMAINS REQUIRED TO PROVISION)	
UNBUNDLED NETWORK ELEMENTS)	
ON EXISTING RATES AND TERMS)	
PENDING THE EFFECTIVE DATE)	
OF AMENDMENTS TO THE)	
PARTIES' INTERCONNECTION)	
AGREEMENTS PURSUANT TO)	
220 ILCS 5/10-101 AND 10-108)	

RESPONSE TO SBC'S MOTION TO DISMISS

Access One, Inc.; ACN Communications Services, Inc.; Allegiance Telecom of Illinois, Inc.; Bullseye Telecom, Inc.; CIMCO Communications, Inc.; CoreComm Illinois, Inc.; DSLnet Communications, LLC; Focal Communications Corporation of Illinois; Forte Communications, Inc.; Globalcom, Inc.; Mpower Communications Corp. d/b/a Mpower Communications of Illinois; RCN Telecom Services of Illinois, LLC; and XO Illinois, Inc. (collectively the

“Competitive Carrier Coalition” or “Coalition”), by their undersigned attorneys, hereby file their response to SBC Illinois’ Answer and Motion to Dismiss (“Motion”), filed on June 7, 2004. For the reasons set forth below, the Commission should deny SBC’s Motion and proceed to consider the merits of the Complaint and Petition.

SBC’s Motion argues that no present dispute is ripe for Commission consideration and that CLECs “seek to manufacture a crisis in order to justify the extraordinary relief they seek.” Motion at 2. On the contrary, it is SBC that has manufactured the destabilizing uncertainty that is now undermining the competitive market, through its decision to remain cryptic about its intentions if *USTA II* becomes effective. In its Complaint/Petition, the Coalition noted that similar proceedings are underway in Connecticut, Michigan and Rhode Island.¹ Since the Petition was filed, the West Virginia Public Service Commission stated: “It is further ordered that Verizon-WV is required to continue to provide UNEs, including but not limited to: dedicated interoffice transport (including dark fiber interoffice transport), high-capacity loops, and mass market switching - at the rates, terms and conditions presently contained in its current interconnection agreements, unless or until the Commission authorizes Verizon-WV to cease providing specific UNEs”²

Despite requests from CLECs in this docket and elsewhere, SBC has to date failed to provide requested assurances that it will not alter its rates or terms for UNEs over the good faith dispute of a CLEC at least until its right to do so is confirmed by the Commission. As

¹ See Complaint/Petition at 8-10.

² Verizon West Virginia, Inc. Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in West Virginia pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order, Case No. 04-0359-T-PC, Commission Order (W.V. Public Service Commission June 8, 2004)

demonstrated below, the dispute between the parties over this issue is ripe for Commission review.

The Coalition is well aware of SBC's public statements, cited in its Motion, committing to abide by the terms of its interconnection agreements. However, as set forth in the Petition, it is unclear that SBC and CLECs share the same view of what it would mean to abide by the agreements. As set forth in the Petition, SBC's posture has been completely different than the periods after which the FCC's *Local Competition* and *UNE Remand Orders* were vacated, when SBC agreed that it would not attempt to make unilateral changes to its UNE provisioning. Indeed, SBC's Motion threatens just that: "SBC ... takes seriously the contractual duty to invoke the change-of-law process set forth in interconnection agreements to incorporate regulatory and judicial decisions – including those that *eliminate* UNEs." Motion at 7 (emphasis SBC's). Thus, despite CLEC arguments that *USTA II* does not eliminate SBC's unbundling obligations, *see e.g.* Petition at Exhibit 1, SBC appears poised to attempt to do so.

SBC's marked departure in rhetoric compared to past judicial remands of FCC rules has understandably generated grave concerns among CLECs, and their customers and investors, that SBC may at any moment after June 15 take the position that the agreements permit it to immediately and unilaterally withdraw or alter its rates or terms for the UNEs on which CLECs rely. See Petition at 3. This uncertainty has made it more difficult for Coalition members to attract, retain and make commitments to customers, some of which are aware of SBC's new policy. SBC may not yet have breached its obligations, but CLEC harms from SBC's implicit threat have already begun.

Unlike courts, the Commission is charged by the state to protect the public interest and promote competition. *See, e.g.,* 220 ILCS 5/13-103 . While it is true that the Coalition does not

know what SBC will do on June 15, that does not mean that the Commission is powerless to at least start to consider the issues raised by the Coalition so that the Commission will be in the best possible position to act before the consequences of unilateral SBC action explode on CLECs and their customers. Even if the Commission does not find that the grounds for a *Complaint* under Section 10-108 have yet arisen, it clearly has the authority to begin to consider the issues set forth in the Coalition's *Petition* as a means of providing stability and protecting consumers and competition. A basis for jurisdiction over the *Petition*, 220 ILCS 5/10-101, provides that the Commission "shall have power to hold investigations, inquiries and hearing concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish."³ The Commission therefore enjoys broad discretion to investigate matters that affect the public interest and consumers in the State of Illinois. The prospect of a rapid and unilateral withdrawal of UNEs would undermine significantly the pro-competitive and consumer protection policies of the State of Illinois set forth in 220 ILCS 5/13-103 and past Commission decisions. With guns cocked and loaded on both sides, and consumers caught in the middle, the Commission need not wait until the firing begins to initiate a proceeding to determine what action may be needed to protect consumers, promote competition and enforce the law and the parties' agreements.

For the foregoing reasons, the Commission should deny SBC's Motion to Dismiss. The Coalition urges the Commission to move forward expeditiously to consider the relief requested in this proceeding. That requested relief is modest.

The Commission should therefore clarify that SBC remains obligated to provide unbundled loops, transport, and switching network elements on existing rates and

³ 220 ILCS 5/10-101.

terms unless and until amendments to SBC's interconnection agreements and Illinois UNE tariff that alter such obligation are approved by the Commission.⁴

The mere fact that SBC opposes this limited request demonstrates the need for Commission involvement. If, as SBC professes, it will not violate its interconnection agreements, then the company should explain how any of its interconnection agreements provide it with authority to change the rates and terms of UNEs without approved interconnection agreements. Dismissing this proceeding without the Commission demanding that SBC explain its legal position will leave a cloud hanging over the competitive landscape.

⁴ Complaint and Petition, p. 12.

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Certificate of Service

I hereby certify that on June 8, 2004 a copy of the Appearance was served on the following individuals via E-docket and e-mail.

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